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ATTORNEY FOR NATHANIAL BROOKS, CREDITOR

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§	Case No: 14-30699-hdh11
	§	
BUFFET PARTNERS, L.P.	§	Chapter 11
	§	
DEBTOR	§	
_____	§	
NATHANIEL J. BROOKS JR.	§	HEARING DATE: March 19, 2014
MOVANT	§	HEARING TIME: 2:00 PM
vs.	§	
	§	
BUFFET PARTNERS, L.P., DEBTOR	§	
	§	
RESPONDENTS	§	

**AMENDED MOTION OF NATHANIEL J. BROOKS JR. FOR RELIEF FROM
AUTOMATIC STAY**

TO THE HONORABLE JUDGE HALE, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Nathaniel J. Brooks (“**Creditor**”), a creditor of the Debtor, and files this, his Amended Motion for Relief from Automatic Stay (“**Amended Motion**”), and in support thereof would respectfully show the Court as follows:

I.

MOVANT’S PENDING STATE COURT ACTION

1. There currently exists a State Court legal proceeding in Dallas County, Texas styled *Nathaniel Brooks Sr. and Briana Bickerson, Individually, and as Next Friend of Nathaniel Brooks, Jr., a Minor Child v. Buffet Partners, L.P., d/b/a Furr's Family Dining*. Movant is the Plaintiff in the aforementioned state court action. Debtor is a Defendant in said action.
2. The only remaining act required to finalize this proceeding is to finalize the settlement agreement made by Nathaniel Brooks Sr. and Briana Bickerson on behalf of their son, Nathaniel Brooks Jr.
3. This act was set to occur in a proceeding in state court on February 5, 2014.
4. Debtor filed for Chapter 11 bankruptcy protection on February 4, 2014 resulting in an automatic Stay on the state court proceedings.

II.

SUMMARY MOVANT'S SUIT FOR PERSONAL INJURY DAMAGES

5. On or about May 27, 2012, Movant was at the Furr's restaurant, owned and operated by Debtor, at 39779 Lyndon B Johnson Fwy, Dallas in Dallas County, Texas. Nathaniel Brooks, Jr. was sitting in a car seat placed on an upside down high chair when Debtor's negligent actions caused Nathaniel Brooks, Jr. to fall out of the chair and suffer injury.

III.

DEBTOR HAD LIABILITY INSURANCE IN EFFECT WHEN MOVANT WAS

INJURED

6. At the time of the incident, as well as the present time, Debtor has maintained liability insurance which insures Debtor from claims involving personal injuries and damages.

7. Movant seeks relief from this Stay solely that it may finalize its state court action and collect under Debtor's insurance policy.

IV.

DEBTOR WILL NOT BE PREJUDICED BY MODIFICATION OF STAY

8. This Court should modify the automatic Stay to permit the finalization of the State Court suit since no great prejudice to either the Debtor or the bankruptcy estate would result.
9. Further, the hardship brought upon Movant due to continuation of the Stay considerably outweighs the hardship caused to Debtor from modification of the Stay.
10. And, the continuation of the automatic Stay denies Movant the opportunity to properly litigate his case, as further time delays may result in the loss of evidence, witnesses, or other necessary components of the case.
11. Finally, lifting the Stay will allow Debtor to be fully released of Movant's claim, thereby serving Debtor's benefit as well.

WHEREFORE, PREMISES CONSIDERED, Creditor respectfully requests that this Court grant an Order lifting the automatic Stay as to Creditor so that Creditor may properly continue his collection proceedings against Debtor in state court, which will be made solely for the purpose of collecting from Debtor's insurance policy. Since Creditor cannot be paid through Debtor's Chapter 11 plan and cannot be adequately protected, Creditor requests that Rule 4001(a)(3) not be applicable in this case due to the lack of adequate protection. Creditor further prays that it have such other and further relief, at law or in equity, to which it may show it to be justly entitled.

Respectfully submitted,

/s/ Sean Flynn

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ATTORNEY FOR CREDITOR

CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that I or a member of this firm acting on my behalf have telephoned Debtors counsel at Baker & McKenzie LLP and Matthews, Stein, Shiels, Pearce, Knott, Eden & Davis and informed them that this Amended Motion was being filed. We spoke to Debtor's attorneys on March 19, 2014.

- ☐ No agreement was reached.
- ☐ Debtor's attorney advised that this Motion would not be opposed.
- ☐ Debtor's attorney advised that this Motion would be opposed.

We were unable to get a response from Debtor's attorney.

Signed,

/s/ Sean Flynn

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Motion was served on or near the date that the foregoing Amended Motion was filed, either via United States First Class mail service or the Court's electronic noticing system to all of the parties in interest listed below and/or listed on any attached Mailing Matrix:

Debtor(s):

Buffet Partners, L.P.
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Debtor's Attorneys:

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Respectfully submitted,

/s/ Sean Flynn

Sean Flynn